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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,220	12/08/2003	Gerald V. Arienzo	90106-002-CIP	4639

30184 7590 07/11/2008

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EXAMINER	
MOSS, KERI A	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
07/11/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,220	ARIENZO, GERALD V.	
	Examiner	Art Unit	
	KERI A. MOSS	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☒ Claim(s) *6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/7/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Objection to claim 6 is maintained.

Rejection of claim 6 under 35 USC 112, second paragraph has been withdrawn in light of applicant's amendments and arguments.

Rejections of under Britton and Bell in view of Miller have been maintained.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims **1-7, 10-15 and 18-20** are rejected under 35 U.S.C. 102(e) as being anticipated by Brittin et al. (USP 6,209,256). Britton discloses a single discrete animal attractant bubble comprising a solution comprising a sufficient amount of a surface active agent to allow formation of said bubble, along with a sufficient amount of an animal attractant agent to provide the attractant nature of said bubble (claim 1). The solution comprises an aqueous solution and the surface active agent is selected from the group of anionic, cationic, non-ionic and ampholytic surfactants (column 5 line 65-column 6 line10). The attractant is a natural (column 3 lines 54-67) or artificial animal attractant (column 4 lines 24-32) that is released in the form of atomized droplets. The surface active agent is soap (column 5 line 65-column 6 line10). The animal attractant may be extracts or an olfactory agent (column 3 lines 54-67). Britton also discloses a

method of distributing a scented animal attractant lure comprising the steps of a) forming a single, discrete bubble comprising an animal attractant and b) releasing the bubble into the air whereby the bubble may travel according to natural or artificial air currents in order to more effectively target and geographically distribute the animal attractant (Experiment 2). Britton further teaches repeating steps a) and b) until a desired plurality of single discrete bubbles have been produced (Experiment 2).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims **1-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell (USP 5,672,342) in view of Miller et al. (USP 5,964,403). Bell discloses a solution comprising a sufficient amount of a surface active agent to allow formation of a bubble (in accordance with applicants' specification), along with a sufficient amount of an animal attractant, such as estrous, agent to provide the attractant nature of the solution (claim 1). The solution comprises an aqueous solution and the surface active agent is selected from the group of anionic, cationic, non-ionic and ampholytic surfactants such as glycerin (column 3). The attractant is a natural or artificial animal attractant (column 3). The surface active agent is soap (column 3). The animal attractant may be extracts or an olfactory agent (column 3).

Bell does not teach a method of distributing the animal attractant. Miller et al. disclose a method of distributing a scented animal attractant lure using a microsprayer

used to dispense an animal attractant in an outdoor setting and that sprays a great distance (abstract). Miller's dispenser involves applying pressurized gas to the attractant chemical to disperse the chemical (column 3 lines 40-59). An advantage of Miller's dispenser is that it allows a small volume of liquid to be dispersed a great distance (column 8 lines 50-65). This saves costs by limiting the amount of attractant used to achieve the desired purpose. Thus, it would have been obvious to one of ordinary skill in the art to combine Bell's animal attractant with Miller's animal attractant dispenser in order to gain the advantages of saving on the costs of the attractant chemical.

It is well known that combining gas with a surfactant solution in a sprayer results in bubble formation. It is also well known that the application of air or gas to the less than 1% glycerin solution of Bell, like that of a commercial bubble-making product, would result in bubble formation. Thus, it would have been obvious to one of ordinary skill in the art that the combination of Bell's surfactant-based solution with Miller's sprayer would have resulted in bubble formation.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims **1, 6, 11 and 19-20** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,683,044. Although the conflicting claims are not identical, they are not patentably distinct from each other because both methods involve two steps of forming a bubble comprising an animal attractant and releasing the bubble into the air whereby the bubble may travel according to natural or artificial air currents. Claims 1, 6 and 11 of the instant application claim the bubble used in the above method and the solution used to make said bubble.

Response to Arguments

8. Applicant's arguments filed April 4, 2008 have been fully considered but they are not persuasive.

9. In response to applicant's argument that Brittin's bubbles do not anticipate the instant invention because Brittin's bubbles would collapse upon meeting the liquid surface or would provide a foam upon the liquid surface, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Brittin's bubbles are capable of "floating in integral form for a period of time through the air" as the bubble solution comprises the necessary ingredients for forming a bubble capable of floating in air, as demonstrated by applicant's specification. If, as applicant argues, Brittin's bubbles do form a foam, the foam is comprised of bubbles and these bubbles would be capable of floating through the air as they comprise the necessary ingredients for forming a bubble capable of floating in air. Brittin's bubbles are thus also capable of bursting, anticipating an unobjectionable claim 6.

10. In response to applicant's argument that Miller teaches disbursing a droplet-carried spray of liquid attractant through the air in contrast to the instant invention, it is well known that combining gas with a surfactant solution in a sprayer results in bubble formation. It is also well known that the application of air or gas to the less than 1% glycerin solution of Bell, like that of a commercial bubble-making product, would result in bubble formation. Thus, it would have been obvious to one of ordinary skill in the art that the combination of Bell's surfactant-based solution with Miller's sprayer would have resulted in bubble formation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI A. MOSS whose telephone number is (571)272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Keri A. Moss/
Examiner, Art Unit 1797

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797